

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES L. LONCKI,	§	
	§	No. 320, 2006
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below:
	§	Superior Court of the
STATE OF DELAWARE,	§	State of Delaware in
	§	and for Sussex County
Plaintiff Below,	§	Cr. I.D. No. 0505000122
Appellee.	§	

Submitted: November 15, 2006

Decided: January 9, 2007

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 9th day of January, 2007, on consideration of the briefs of the parties, it appears to the Court that:

1) James L. Loncki entered into an agreement pursuant to which he pled no contest to felony theft and third degree assault. As part of the plea agreement, Loncki agreed that he was an habitual offender under 11 *Del.C.* § 4214(a), and he also agreed to immediate sentencing. The Superior Court sentenced him, as an habitual offender, to three years at Level V for the theft conviction and one year suspended for probation for the assault conviction. At sentencing, the court noted that the State had not filed

a motion to have Loncki declared an habitual offender. Loncki acknowledged his status on the record and the State represented that it would follow up with a motion.

2) Three months later, Loncki filed a *pro se* motion for correction of illegal sentence, arguing that the State had failed to file the required motion to declare him an habitual offender. In response, the State filed a motion to declare Loncki an habitual offender. At the hearing on the two motions, the Superior Court vacated Loncki's original sentence and set a new hearing date for consideration of the habitual offender motion and resentencing. At the second hearing, the court declared Loncki to be an habitual offender and resentedenced him to the same term as the original sentence.

3) On appeal, Loncki argues that the original sentence was illegal because there was no motion to declare him an habitual offender. He contends that the second sentence was untimely and deprived him of his right to speedy sentencing. We find no merit to Loncki's arguments. In the plea agreement, and again in open court, Loncki stipulated to his status as an habitual offender. Thus, Loncki waived the procedural requirements of a motion and hearing to determine his status.¹ Since the

¹*Abdul-Akbar v. State*, 1997 WL 776208 (Del. Supr.).

original sentence was valid, and Loncki has not suffered any prejudice from the “delay” in resentencing him, his speedy sentencing claim, likewise, fails.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

²*Key v. State*, 463 A.2d 633 (Del. 1983).